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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/885,707	06/20/2001	Arnoldus Werner Johannes Oomen	NL 000332	4224
24737 7590 11/27/2009 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER				
OPSASNICK, MICHAEL N				
ART UNIT		PAPER NUMBER		
2626				
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11/27/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/885,707

**Applicant(s)**

OOMEN ET AL.

**Examiner**

MICHAEL N. OPSASNICK

**Art Unit**

2626

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 11 and 13-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-8, 11 and 13-23 is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-84C)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-5 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-5 are directed to a method of calculating phase jitter and adding phase jitter amounts based upon the frequency and amplitude of a signal which does not fall into one of the enumerated four categories of patent eligible subject matter recited in 35 U.S.C. 101 (process, machine, manufacture, or composition of matter).

Claims 1-5 are not directed toward:

1) a process (nothing is processed/transformed, - a phase jitter is calculated and added; a statutory "process" under 35 USC 101 must (a) be tied to another statutory category (such as a manufacture or a machine), or (b) transform underlying subject matter (such as an article or material) to a different state or thing. Claims 1-5 are neither transform underlying subject matter nor positively recite structure associated with another statutory category, and therefore do not define a statutory process.);

2) a machine – the claim steps are toward calculating a phase jitter and adding phase jitter to a signal - there are no claim elements towards an appropriate apparatus, e.g. the elements of a device that would perform the claim steps.

3) a manufacture (no claim elements pertain to an output product nor a

4) a composition of matter (the claims are toward calculation of phase jitter, and not a composition of matter).

Furthermore, claims 1-5 are directed to a method which calculates phase jitter, and as claimed, is a mathematical calculation/algorithm where the claims do not perform an underlying transformation of the underlying state to a different state or thing. If the acts of a claimed process manipulate only numbers, abstract concepts or ideas, or signals representing any of the foregoing, the acts are not being applied to appropriate subject matter (Benson, 409 U.S. at 71-72, 175, USPQ at 676). Furthermore, claims define nonstatutory processes if they simply manipulate abstract ideas (Warmerdam, 33 F.3d at 1360,31 USPQ2d at 1759). As examples of statutory transformations of underlying subject matter (such as an article or material) to a different state or thing, (Alappat, 33 F.3d at 1542-4,31 USPQ2d at 1556-7), the claimed invention as a whole is directed to a combination of interrelated elements which combine to form a machine for converting discrete waveform data samples into antialiased pixel illumination intensity data to be displayed on a display means; in Arrhythmia, 958 F.2d, 22USPQ at 1037, the claimed transformation of data represented the condition of a patient's heart; in State Street (149

F.3d at 1373-73, 47 USPQ2d at 1601-02), the claimed transformation of data by a machine through a series of mathematical calculations into a final share price momentarily fixed for recording and reporting purposes and even accepted and relied upon by regulatory authorities and in subsequent trades.

***Allowable Subject Matter***

3. Claims 1-8,11,13-23 are allowable over the prior art of record (and claims 1-5 would be allowed once amended to overcome the 35 U.S.C. 101 rejections stated above).

4. The following is an examiner's statement of allowable subject matter:

As per the independent claims, the claim recitations pertaining to the transmission of phase jitter parameters, along with the other elements as claimed, is not explicitly taught by the prior art of record. With respect to the prior art of record, creating phase jitter parameters and transmission of such parameters are well known in the prior art. As an example, Levine et al (A Sines+Transient+Noise Audio....) teaches how technology has developed such that the transmission of phase information, once a concern in the technology, can be avoided (Section 3.3, wherein Levine teaches two reasons as to why phase information is transmitted -- for the creation of residual error signals and for tracking transients, neither of which is needed in the teaching of Levine (the residual error is calculated on the encoder end, and a transformer coder is used to model transients so that transmission of phase information is not needed). A more traditional example of prior art, Aguilar (7272556), teaches the transmission of phase

information (background and summary, para29, in a transition state mode, additional measured phase information is transmitted to the decoder to improve the signal reconstruction accuracy) in a speech codec system. Thirdly, Stachurski et al (7222070) teaches the calculation of a phase differential to be used for alignment at the decoder end (background/summary, para 11-parametric coding for the strongly-voiced frames may include amplitude-only waveforms plus an alignment phase to maintain time synchrony; zero-phase equalization filtering prior to waveform coding helps avoid phase discontinuities at interfaces with parametric coded frames; and interpolation of parameters within a frame for the waveform coder enhances performance). However, none of the prior art of record explicitly teaches a phase jitter parameter (which, as defined by applicants specification) representing a differential between the original waveform and a synthesized waveform and represented by a single bit).

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Response to Arguments***

5. Applicant's arguments with respect to the claims regarding 35 U.S.C. 101 have been considered but are unpersuasive. As per applicants arguments that independent claim 1 now contains reference to a device, examiner argues that the current claim language is in "for use" format and as such, still renders the claim unstatutory under 35 U.S.C. 101. Furthermore,

*Conclusion*

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Opsasnick, telephone number (571)272-7623, who is available Tuesday-Thursday, 9am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Richemond Dorvil, can be reached at (571)272-7602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Michael N. Opsasnick/  
Primary Examiner, Art Unit 2626  
11/21/09